

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE: . Case No. 03-26565
. .
. .
JAZZ PHOTO CORP., .
. 50 Walnut Street
Debtor, . Newark, New Jersey 07102
. .
. October 21, 2003
. . 9:34 a.m.
.

TRANSCRIPT OF HEARING
BEFORE HONORABLE MORRIS STERN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Cole, Schotz, Meisel, Forman
& Leonard, P.A.
By: MICHAEL SIROTA, ESQ.
STUART KOMROWER, ESQ.
FRANCK CHANTAYAN, ESQ.
Court Plaza North
25 Main Street
P.O. Box 800
Hackensack, New Jersey 07602-0800

Kaplan & Gilman
By: JEFFREY KAPLAN, ESQ.
900 Route 9 North
Woodbridge, New Jersey 07095

Audio Operator: Carol Urena

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-Mail: jjcourt@optonline.net

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (Cont'd.):

For Rosenthal:

Kirkpatrick & Lockhart
By: ELIZABETH SINGER, ESQ.
599 Lexington Avenue
New York, New York 10022-6030

For Jack Benun:

Riker, Danzig, Scherer, Hyland &
Perretti, LLP
By: DENNIS J. O'GRADY, ESQ.
STEPHEN J. AMORIELLO, ESQ.
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962

For the Trustee:

Office of the U.S. Trustee
By: MARGRET JUROW, ESQ.
One Newark Center
Suite 2100
Newark, NJ 07102

For Fuji Photo:

Lowenstein Sandler, PC
By: BRUCE D. BUECHLER, ESQ.
JASON TEELE, ESQ.
65 Livingston Avenue
Roseland, NJ 07068

Stroock & Stroock & Lavan, LLP
By: LAWRENCE ROSENTHAL, ESQ.
LISA JAKOS, ESQ.
MATTHEW W. SIEGAL, ESQ.
180 Maiden Lane
New York, NY 10038

For Creditors Committee:

Ravin Greenberg PC
By: HOWARD S. GREENBERG, ESQ.
SHERYLL S. TAHIRI, ESQ.
101 Eisenhower Parkway
Roseland, New Jersey 07068

I N D E X

WITNESSES:

PAGE

JAMES P. FIELD

Direct Examination by Ms. Jakos	30
Continued Direct Examination by Ms. Jakos	67
Cross Examination by Mr. Kaplan	111
Cross Examination by Mr. Greenberg	133
Redirect Examination by Ms. Jakos	139
Recross Examination by Mr. Kaplan	152
Further Redirect Examination by Ms. Jakos	155
Recross Examination by Mr. Greenberg	157
Examination by the Court	158

PETER GOODE

Direct Examination by Mr. Siegal	164
Cross Examination by Mr. Sirota	197
Redirect Examination by Mr. Siegal	215

FONG PO LAW

Direct Examination by Mr. Siegal	220
Cross Examination by Mr. Sirota	247

EXHIBITS

I.D.

EVD.

Debtor's Exhibit Binder	--	20*
D-30 Depo transcript - Mr. Fong - 10/17	18	18
D-31 Depo transcript - Mr. Goode - 10/17	18	18
Fuji's Binder	--	20**

*All exhibits stipulated to and in evidence except exhibits 11 through 16.

**All exhibits stipulated to and in evidence.

1 THE COURT: Court is now in session. The scheduled
2 matter will be heard and fully considered. Jazz Photo, the
3 motion to appoint a trustee. Appearances, please.

4 MR. SIROTA: Judge, good morning. Michael Sirota,
5 Stuart Komrower, and Franck Chantayan on behalf of the debtor.
6 Cole, Schotz, Meisel, Forman, and Leonard.

7 MR. GREENBERG: Good morning, Your Honor. Howard S.
8 Greenberg and Sheryll S. Tahiri, Ravin Greenberg, and we appear
9 for the Creditors Committee.

10 MS. JUROW: Margaret Jurow for the United States
11 Trustee.

12 MR. O'GRADY: Good morning, Your Honor. Dennis
13 O'Grady and Steve Amoriello of Riker, Danzig, Scherer, Hyland,
14 and Perretti representing Mr. Benun.

15 MS. SINGER: Good morning, Your Honor. Elizabeth
16 Singer from Kirkpatrick and Lockhart on behalf of Rosenthal and
17 Rosenthal.

18 MR. KAPLAN: Your Honor, Jeff Kaplan from Kaplan and
19 Gilman?? for Jazz Photo.

20 MR. ROSENTHAL: Your Honor, Lawrence Rosenthal of
21 Stroock and Stroock and Lavan of New York. Present with me are
22 Lisa Rudden -- Lisa Jakos Rudden and Matthew Siegel.

23 MR. BUECHLER: Bruce Buechler and Jason Teele from
24 Lowenstein Sandler co-counsel to Fuji Photo Film.

25 THE COURT: All right. Who's going to present the

1 movant's case?

2 MR. BUECHLER: Mr. Rosenthal to start.

3 THE COURT: Mr. Rosenthal.

4 MR. ROSENTHAL: Your Honor, at the end of the day
5 this is a factually-implicated matter. Putting aside the
6 statements against counsel and client in the reply or the
7 answering papers, the case turns on the facts, and on an issue
8 which we will submit a brief the case can be decided on
9 circumstantial evidence. I don't need to find a witness who
10 watches Mr. Benun walk away with a bag of money. All of the
11 elements of this case can be decided under circumstantial
12 evidence and matters what we contend exists here.

13 In fact, we contend that the smoking gun is the
14 accumulated sum of the evidence in this case, so we propose to
15 get right -- cut right to the quick and start presenting to
16 Your Honor the evidence -- the proofs.

17 THE COURT: May I ask you something? And I
18 appreciate that approach. I think we ought to just get
19 witnesses who traveled and get them on and hear what they have
20 to say, but I do want to direct the parties' attention to some
21 questions that I have. I don't mean to indicate that these are
22 exclusive areas of concentration of the Court, but let me ask
23 you, Mr. Rosenthal, do you intend to challenge Mr. Benun's
24 position? It's in several places, but if we take the brief of
25 the debtor -- the memorandum summarizing the evidence at page

1 THE COURT: Court is now in session. The scheduled
2 matter will be heard and fully considered. Jazz Photo, the
3 motion to appoint a trustee. Appearances, please.

4 MR. SIROTA: Judge, good morning. Michael Sirota,
5 Stuart Komrower, and Franck Chantayan on behalf of the debtor.
6 Cole, Schotz, Meisel, Forman, and Leonard.

7 MR. GREENBERG: Good morning, Your Honor. Howard S.
8 Greenberg and Sheryll S. Tahiri, Ravin Greenberg, and we appear
9 for the Creditors Committee.

10 MS. JUROW: Margaret Jurow for the United States
11 Trustee.

12 MR. O'GRADY: Good morning, Your Honor. Dennis
13 O'Grady and Steve Amoriello of Riker, Danzig, Scherer, Hyland,
14 and Perretti representing Mr. Benun.

15 MS. SINGER: Good morning, Your Honor. Elizabeth
16 Singer from Kirkpatrick and Lockhart on behalf of Rosenthal and
17 Rosenthal.

18 MR. KAPLAN: Your Honor, Jeff Kaplan from Kaplan and
19 Gilman for Jazz Photo.

20 MR. ROSENTHAL: Your Honor, Lawrence Rosenthal of
21 Stroock and Stroock and Lavan of New York. Present with me are
22 Lisa Rudden -- Lisa Jakos Rudden and Matthew Siegal.

23 MR. BUECHLER: Bruce Buechler and Jason Teele from
24 Lowenstein Sandler co-counsel to Fuji Photo Film.

25 THE COURT: All right. Who's going to present the

1 make a difference to you?

2 MR. ROSENTHAL: No, Your Honor, and let me explain.

3 THE COURT: So what would your argument be if I found
4 the numbers to be roughly correct?

5 MR. ROSENTHAL: Your Honor, there is a profit that
6 rested and assets that rested in Jazz Hong Kong independent of
7 all else. We will show you, for example, in the exhibits put
8 forward by the debtor himself invoices for cameras from third
9 parties at a dollar 25, and the -- one of the legs upon which
10 our motion stands is that there was a moment in time before the
11 bankruptcy, in fact, before and up to the bankruptcy, starting
12 some time in the end of 2002 when the jury came in with its
13 verdict that there was a thriving entity called Jazz Hong Kong,
14 who made money, and, in fact, perhaps visually made most of the
15 money that the entire consolidated company made.

16 THE COURT: That's virtually conceded.

17 MR. ROSENTHAL: And --

18 THE COURT: Am I not right? I mean we've moved from
19 four cents to 36 cents or so in U.S.

20 MR. ROSENTHAL: But the entire premise upon which
21 that argument is made is that a dollar 88 is what it cost to
22 make the camera, and there is a profit in here, and these
23 cameras were largely made pre this shift by wholly-owned
24 subsidiaries of Jazz Hong Kong what are called the WOFES.
25 There was one affiliated with a company called Pengji and

1 another one affiliated with a company called Ever Best, and
2 those are wholly-owned entities to which substantial sums were
3 invested for the purpose of --

4 THE COURT: Wholly-owned by?

5 MR. ROSENTHAL: Jazz Hong Kong, and were part of the
6 asset body of Jazz Hong Kong. They took money, and they
7 invested it.

8 THE COURT: But as I understand it, the argument that
9 Poly-Tech is set up in a free trade zone, apparently was able
10 to operate. Again, I'm -- this appears to be the allegation --
11 was able to operate at lower costs, and so they were able to
12 supply Jazz U.S. at roughly the same price that Jazz Hong Kong
13 -- that they were supplying Jazz Hong Kong or that Jazz Hong
14 Kong was being supplied at.

15 MR. ROSENTHAL: But I think, as I said before, Your
16 Honor, first of all, we shouldn't be over focusing on the
17 concept of free trade zone. There were not duties involved
18 with these products under any circumstances. So there was no
19 apparent financial advantage other than a claim ease of
20 operation.

21 Second of all, the -- one has to assume in that
22 analysis that says that all be well, that there isn't a profit
23 on the other side of --

24 THE COURT: In Poly-Tech.

25 MR. ROSENTHAL: In Poly-Tech. Poly-Tech --

1 THE COURT: That should've been -- should've belonged
2 to Jazz U.S. now.

3 MR. ROSENTHAL: Exactly. Actually should've belonged
4 to Jazz U.S.'s wholly-owned subsidiary and its wholly-owned
5 subsidiaries, and, therefore, was an asset of Jazz U.S., and I
6 think that there was a conscious effort to eliminate access to
7 those funds -- those monies at the -- on the run up to the
8 bankruptcy, and I think Your Honor will hear the evidence, and
9 I think it will show that, first of all, there were two Poly-
10 Tech's, and you also can't lose sight of that. There's the
11 Poly-Tech organized in April of 2002 for mystical purposes, and
12 then there's the Poly-Tech wholly-owned subsidiary, mind you,
13 not owned by Mr. Lau necessarily but wholly owned by the Poly-
14 Tech in Hong Kong. This Kitty Wong entity which doesn't seem
15 to have much of a life or a revenue stream, that entity is the
16 sole proprietor, as best public records could reveal, of the
17 factory in Hong Kong. So there is a chain of events which I
18 think Your Honor will -- when treated as a whole would -- can
19 only be described as a transferring of the assets of the debtor
20 in anticipation of where we are today, which is --

21 THE COURT: But if I were to turn a blind eye -- and
22 I'm not saying I will -- to all of the factors running up, that
23 there was an ongoing litigation, that both Jazz Hong Kong and
24 Jazz U.S. and Mr. Benun were at risk in that litigation before
25 Judge Hochberg -- if I were to ignore that for the moment --

1 again, I'm not saying I will ultimately but -- and Jazz U.S.
2 were able to find a cheaper source -- cheaper than its own
3 subsidiary and were able to take -- essentially collapse the
4 profit or take the profit out of China and bring it into the
5 U.S., would there be something fundamentally wrong with that?

6 MR. ROSENTHAL: Your Honor, there would not be
7 provided the entity that is created is not also taking for
8 itself a profit that belongs to the family of companies. The
9 savings I guess --

10 THE COURT: Well, wait a minute. Wait a minute. Let
11 me just go to that. It's one thing to say Mr. Benun secretly
12 owns Poly-Tech. If you can prove that or establish through
13 strong circumstantial evidence that he has an interest in it,
14 that's one thing, but it's something else to say that if
15 there's any profit in a supplier who supplies the system at a
16 lower price, then that is some sort of a fiduciary breach. I
17 have trouble understanding that. All outsourcing would be
18 questioned on that basis for every U.S. enterprise.

19 If, again, ignoring the immediate circumstances of
20 the action before Judge Hochberg, if Jazz U.S. looked around
21 and found XYZ Company in wherever -- Iceland -- and that
22 company could supply product at a lesser price, so that the 36
23 cents or 40 cents or whatever could be realized by Jazz U.S.
24 and they chose to do it, where would -- even if the Iceland
25 company were making a profit, what would be wrong with that in

1 terms of management by Jazz U.S.?

2 MR. ROSENTHAL: The way you framed the question, Your
3 Honor, unfortunately that's not the situation we have here. We
4 have, for example, Jazz Hong Kong still there with employees
5 and spending money, servicing and keeping, enabling the Poly-
6 Tech and Jazz U.S. to function at no compensation. The fees
7 that were left and the profit still left in Hong Kong, some of
8 them went to support the unit, you described it, Your Honor.

9 I would also point out that that's not the only leg
10 of our claim, but normally I would agree with you that seeking
11 a lower price operation would certainly be commendable under
12 normal circumstances. Here the lower-priced entity is just a
13 preacher not an independent entity -- just a preacher of either
14 Mr. Benun or the -- or Jazz U.S., and here the way it came to
15 be generates serious issues about the transfer of assets that
16 belong to the debtor.

17 THE COURT: Assets -- you mean the setup costs, or
18 you're talking about the future profit -- today's profit?

19 MR. ROSENTHAL: Your Honor, there are several assets
20 involved here. The first is the setup cost. The very creation
21 of this factory was entirely funded by Jazz. The second aspect
22 is the transfer of the profit, because I don't believe anybody
23 functions as a charity. There's a profit in the manufacture,
24 there's a profit in the middle man in Jazz Hong Kong, and
25 there's a profit in Jazz U.S., although to tell the truth, the

1 prices in which Jazz U.S. is selling, I don't think there can
2 ever be a profit no matter what they do, but they commendably
3 perhaps organized the WOFEs in order to try and capture the
4 manufacturing profit. That's what they did, and they -- that
5 arrangement is -- has now been substituted to a second
6 arrangement where the manufacturing profit is no longer in this
7 enterprise, looking at it in a global view. That manufacturing
8 profit is somewhere in Hong Kong or China, and with zero -- and
9 I emphasize zero -- transparency as to what's going on, because
10 what we have here is this company appears to be functioning
11 using the raw materials that were purchased before by the unit
12 -- the film, the shells -- and there are questions about the
13 prices at which the shells are being purchased, but the bottom
14 line though is that there is just no accounting, absolutely
15 zero accounting is what's going on.

16 In Jazz Hong Kong there was a concession throughout
17 these proceedings that Jazz Hong Kong is an arm of Jazz U.S.
18 If we wanted discovery, for example, on an infringement issue,
19 all we have to do is ask, and never once, to Jazz's credit, was
20 the argument made that we couldn't have discovery of Jazz Hong
21 Kong, because they're an independent third party located in
22 Hong Kong. That was never the issue. The issue always was how
23 can I -- I should produce the documents. What do they need?

24 Now all of the activities are now hiding in another
25 entity which we contend, as I said, is created not to take

1 advantage of any profit, because at the end of the day the
2 costs remain pretty much the same. What happens here is that
3 it has the appearance of being more profitable, because we have
4 20 people working in Hong Kong for nothing and performing all
5 the overhead functions, and in any event, it's not spilling off
6 enough to cover the overhead in any meaningful way. So I think
7 that's --

8 THE COURT: But if it weren't a cost -- and I guess
9 that will have to be established -- that works it way back to
10 the debtor, that is cost in maintaining Jazz Hong Kong, and my
11 recollection is the discussion of Jazz Hong Kong's function to
12 turn to quality control, but leaving that out for the moment,
13 though I'm sure there's a business argument that will be made
14 that a presence in Hong Kong by Jazz U.S. is necessary and
15 whether it's their subsidiaries' people or individuals sitting
16 there as quality control people or controllers of the flow of
17 product, whatever it is, that's a business issue.

18 But for me I think the question is a little
19 different. It looks like Jazz U.S. has suddenly become
20 enormously profitable. It's gotten a ninefold increase in its
21 gross profit on the single use cameras.

22 MR. ROSENTHAL: Commensurate with a meaningful
23 percentage decrease in selling price. Essentially very
24 interesting except that they're not making a profit, and that
25 brings into question -- that's another issue in front of this

1 Court. They, in fact, did not -- whatever this gap -- this so-
2 called windfall, they are not making a profit.

3 THE COURT: Shouldn't I say that your complaint was
4 with the situation that was before in terms of management? Now
5 this is a better management program for the debtor? That
6 they're -- that Jazz U.S. is getting products at a lesser price
7 than they were charged before even though it was their own
8 subsidiary?

9 MR. ROSENTHAL: I am not convinced, and I --

10 THE COURT: So we're back to the factual question,
11 but if that were the case, isn't it better management? Isn't
12 that an improvement in the Chapter 11 for the debtor?

13 MR. ROSENTHAL: Your Honor, I think under the
14 circumstances here, no, and I think the reason is that we have
15 no -- the reason is the missing profits. There are other
16 profits in this chain, and as I said before, the debtor
17 commendably tried to capture as many of those profits as it
18 could by controlling as many of the stages of the process as it
19 could and --

20 THE COURT: But in a risky business -- I mean is it
21 fraud that they out sourced, or is it fraud, because they have
22 a secret interest in Poly-Tech through Mr. Benun? Which is it
23 or both?

24 MR. ROSENTHAL: Your Honor, from --

25 THE COURT: Fraud. I'm focusing on that.

1 MR. ROSENTHAL: On the word fraud. Your Honor, I
2 think it's fraud in the way that Poly-Tech is structured and
3 the way that they are financing --

4 THE COURT: Because of Mr. Benun's interest or
5 because Jazz U.S., whether through Jazz Hong Kong or directly,
6 set up Poly-Tech as a supplier?

7 MR. ROSENTHAL: Because of the way it's functioning.
8 Your Honor, I think --

9 THE COURT: I'm not clear on that.

10 MR. ROSENTHAL: All right. The fraud is in the
11 functioning. The evidence will reveal that Poly-Tech -- we
12 have surmised, interestingly enough by Mr. Benun, who knows
13 apparently what's going on, or we can suspect, as to what
14 exactly Poly-Tech is doing, buy it is truly a business as usual
15 in the sense the raw material for the camera -- there are
16 several constituents. There's the shell. There's the film.
17 There's the packaging. They all seem to be, at least as we can
18 perceive it here -- not seem to be, they are still being bought
19 and paid for by the company here in the United States and
20 coming back as a finished product, and somewhere between those
21 two is a profit, and somebody is making that profit, and we
22 contend that that somebody is whoever truly controls Poly-Tech,
23 and we believe that that somebody is Mr. Benun.

24 THE COURT: Okay, but you've just -- so it's Mr.
25 Benun. If it's proven that Mr. Benun has no relationship at

1 all to Poly-Tech -- if it were proven -- would that be the end
2 of your argument as to that point?

3 MR. ROSENTHAL: If Poly-Tech were truly an
4 independent entity --

5 THE COURT: Yes.

6 MR. ROSENTHAL: -- I think that would be the end of
7 that argument.

8 THE COURT: That's what I was trying to get to. All
9 right.

10 MR. ROSENTHAL: Your Honor, that's -- I was trying to
11 say that if this were truly an independent --

12 THE COURT: And now who has the burden of
13 establishing Mr. Benun's connection to Poly-Tech?

14 MR. ROSENTHAL: We do, Your Honor.

15 THE COURT: All right. Okay. We can begin.

16 MR. SIROTA: Judge, before we begin --

17 THE COURT: Yes? I'm sorry. I --

18 MR. SIROTA: -- can I just attend to a housekeeping
19 issue --

20 THE COURT: Oh, absolutely.

21 MR. SIROTA: -- so that we're all on the same page?
22 Fortunately, to try to lessen the torment to the Court and the
23 parties, we agreed this morning on a stipulation regarding --

24 THE COURT: Did I bring your stipulation here?

25 MR. SIROTA: I --

1 MR. BUECHLER: We gave the original, Your Honor, to
2 your Clerk.

3 MR. SIROTA: I have an extra copy if you'd like.

4 THE COURT: Yes, I think I left it on the table. I
5 did review it.

6 MR. SIROTA: May I approach?

7 THE COURT: Yes. Thanks.

8 MR. SIROTA: And basically, Judge, I think you were
9 delivered two packages. One from Fuji which had I believe
10 three or so binders which summarized their evidence, and then
11 we delivered a binder yesterday, which was captioned "Debtor's
12 Exhibits in Opposition," and that -- what that stipulation
13 provides is that we stipulate to the admission of evidence as
14 to Fuji's three binders. Our view of this case is whatever
15 they wanted and proposed to put into evidence, we welcomed, and
16 that we did the same thing with respect to the discovery they
17 requested. Given the very serious nature of these allegations,
18 there was no time to bicker over fine rules of evidence.

19 And with respect to our exhibits, Fuji has stipulated
20 to all except the 11, 12, 13, 14, 15, and 16. Basically, they
21 did not stipulate to the admission of Mr. Benun's supplemental
22 affidavit and the exhibits contained therein, and we will
23 address that.

24 THE COURT: But it's only the Benun supplemental
25 affidavit.

1 MR. SIROTA: Everything else was stipulated to and is
2 in evidence, and there are two add on's, Judge, just so that
3 we're all on the same numbering. D-30 we'd like to add on in
4 our exhibit binder. It would be the deposition transcript of
5 Mr. Fong, and D-31 is the deposition transcript of Mr. Good,
6 which has also been stipulated and moved into evidence, and
7 that these numberings are all set forth in our binder that we
8 delivered, and if Your Honor needs another set, I have it.

9 THE COURT: Yes, I just made a copy. Let me just get
10 my ducks in a row, if I may. Just give me one minute.

11 (Pause)

12 THE COURT: All right, Mr. Sirota, if I can just
13 account a little bit.

14 MR. SIROTA: Sure.

15 THE COURT: In your debtor's exhibits in opposition
16 D-30 -- do we have a supplement that --

17 MR. SIROTA: No, we don't. We agreed on it this
18 morning. Those depositions --

19 THE COURT: Okay. All right, so let me write that
20 in. What's D-30?

21 MR. SIROTA: D-30 is the October 17th deposition
22 transcript of Mr. Fong, F-o-n-g, and D-31 is the October 17th
23 deposition transcript of Mr. Peter Goode, G-o-o-d-e, and if
24 Your Honor will just note that D-11 through 16 has not been
25 stipulated to, and the balance of what Your Honor has in our

1 binder is in evidence per that stipulation.

2 THE COURT: Okay. That's very helpful.

3 MR. SIROTA: And, Judge, I'm not going to take the
4 opportunity at this point to respond to Mr. Rosenthal's very
5 brief opening comments. Our view of the case is that when the
6 evidence goes in, Your Honor will be left with the same
7 impression we're left with, and that is there is absolutely no
8 support whatsoever, circumstantial or otherwise, to prove the
9 extraordinarily serious allegations made against this debtor
10 and Mr. Benun, and we'd like to move forward with the evidence,
11 so we can put this behind us.

12 THE COURT: All right. Thank you.

13 MR. ROSENTHAL: Your Honor, I sensed I thought in Mr.
14 Sirota's comment an application to receive in evidence the
15 exhibits that have been agreed to, and I actually move -- in
16 order to save time as we go, move into evidence the exhibits in
17 the binders which -- the sub-set of the original selection, and
18 I have here an exhibit list entitled, "Confidential Exhibits in
19 Support of Fuji's Motion to Appoint a Trustee," which is the
20 volumes that Your Honor was handed, and I move the admission of
21 these exhibits in light of our stipulation.

22 THE COURT: I appreciate it. Let me just make sure
23 that we are again on the same page. That's an exhibit list of
24 six pages. Your numbering system runs through 100's and starts
25 at exhibit 100 and ends at 888, Jazz Operating monthly report.

1 MR. ROSENTHAL: That's correct, Your Honor.

2 THE COURT: All right. Mr. Sirota, I assume that
3 pursuant to the stipulation there's no objection.

4 MR. SIROTA: There's no objection. Both sides'
5 binders are respectively in evidence.

6 MR. ROSENTHAL: I have no problem. In fact, I
7 thought that's what he was doing, Your Honor.

8 THE COURT: What we will do is have Carol Mark the
9 exhibit lists, and we'll go from there. All right.

10 MR. ROSENTHAL: Thank you, Your Honor.

11 MR. SIROTA: Thank you, Judge.

12 MR. ROSENTHAL: Your Honor, as our first witness we
13 call Jim Field, who is an employee of Fuji's Greenwood, South
14 Carolina manufacturing subsidiary, and Mr. Field will be
15 examined by Ms. Lisa Jakos Rudden.

16 THE COURT: Carol, would you swear the witness,
17 please?

18 MS. URENA: Raise your right hand.

19 JAMES P. FIELD, FUJI'S WITNESS, SWORN

20 MS. URENA: Please state your name for the record.

21 MR. FIELD: James P. Field.

22 MS. JAKOS: Good morning, Your Honor. May it please
23 the Court. My name is Lisa Jakos Rudden. As a preliminary
24 matter, we would like to offer to the Court all of the cameras
25 that Mr. Field has examined for his analyses that have been

1 reviewed in the various reports, are actually in a van outside.
2 We didn't want to burden the Court with boxes and boxes of
3 cameras, however, if the Court would like to receive them, we
4 have them available to be received. What we've done is we
5 brought one set in of the cameras which we'll use during
6 examination of Mr. Field today.

7 THE COURT: Were these available to the debtor?

8 MS. JAKOS: Yes, they were, and they were examined
9 during Mr. Field's deposition last week by Mr. Kaplan, so --
10 and they were made available for a couple of days last week,
11 and that offer was made for Mr. Kaplan to come back if he
12 wanted to further review the cameras, that they were available
13 in our offices, and they will continue to be available in our
14 offices if the Court does not wish to have them in their
15 storage room.

16 THE COURT: Well, I think you better hang on to them.

17 MS. JAKOS: Okay.

18 THE COURT: Just knowing what happens around here,
19 somebody may just take one out just to see what it's like not
20 with any ill motive, but it's a -- what do you intend to do
21 with these? Just have it available? Is that your point?

22 MS. JAKOS: Yes. I mean these are the cameras that
23 Mr. Field reviewed, so in the event that the Court --

24 THE COURT: So if there's a question that the Court
25 raises or on cross examination, we can at least look at this

1 and get some idea of what he saw and what he examined. All
2 right. Fine.

3 MS. JAKOS: Yes. Also, as another preliminary
4 matter, Your Honor, understand that exhibits 400, 401, 402, and
5 403 are not part of the stipulation which was just entered by
6 the parties, and these are transcript -- excerpts of
7 transcripts from the testimony of Mr. Ogura, Mr. Kroger, Mr.
8 Field, and Mr. Walde from the District Court of New Jersey
9 action, and they provide background, so that we could shorten
10 some of Mr. Field's testimony in some of the areas relating to
11 production and origination of manufacture and those issues. So
12 I would ask to move Fuji exhibits 400, 401, 402, and 403 into
13 evidence at this time as well as Fuji exhibit 404 which is a
14 chart of production which was also used and admitted in the
15 District Court case as plaintiff's exhibit 627.

16 THE COURT: Mr. Sirota.

17 MR. SIROTA: Well, Mr. Kaplan is going to address the
18 particular nuances, but I can generally state that the debtor
19 will not stipulate or consent for the very reason that entire
20 procedure was set out where Fuji was obligated in its October
21 memorandum to put before this Court its entire case, all of its
22 exhibits, all of its evidence, and present it to us for our
23 consideration.

24 MR. KAPLAN: Your Honor, I might add that at Mr.
25 Field's deposition, which I took last week -- and if I have a

1 moment, I'm sure I can find it. After we examined him we
2 specifically asked him -- I think it was twice -- is there
3 anything else you'll be using or testifying about at the
4 hearing on October 21st other than what we've discussed, and he
5 said, no, everything's been discussed. These exhibits -- this
6 is the first I've ever heard -- I've never seen -- other than
7 they were in the District Court, I was there, but I don't know
8 what it is they're offering or how it relates to any of this.
9 The first I'm hearing is it right now that they're planning to
10 offer these. 10:06:45 figure out if I need to go depose
11 somebody to cross examine that testimony.

12 THE COURT: Can you make a proffer on this?

13 MS. JAKOS: Your Honor, the testimony contained in
14 exhibits 400 through 404 merely support exhibits that are
15 already admitted into evidence. I can give you an example
16 which is Fuji exhibit 405, which discusses -- which is an
17 exhibit that has a diagram of a type one Fuji camera and it has
18 other information on it that was testified to at the District
19 Court trial by Mr. Ogura and Mr. Kroger, so this is merely
20 background testimony to shorten Mr. Field's testimony here
21 today. These exhibits are already admitted, so I don't
22 actually --

23 THE COURT: It's hard for me to assess what is in
24 there. If it's background, maybe we can just skip it until it
25 becomes critical if you think it becomes critical, and then we

1 can revisit it.

2 MS. JAKOS: All right, and --

3 THE COURT: So let's leave it out. Mr. Rosenthal?

4 MR. ROSENTHAL: I would just observe that -- let me
5 make two observations, Your Honor. First of all, at the
6 request of Mr. Sirota, a part of the stipulation is that the
7 defendant could use --

8 THE COURT: Fuji reserves the right to seek admission
9 of other evidence, deposition excerpts and testimony to which
10 there is no stipulation.

11 MR. ROSENTHAL: All right. If we turn to the top of
12 page three, Your Honor?

13 THE COURT: Yes.

14 MR. ROSENTHAL: Item Roman 12 --

15 THE COURT: Right.

16 MR. ROSENTHAL: -- is excerpts from the United States
17 District Court of New Jersey trial, which Mr. Sirota asks for
18 permission to receive, and I agreed, and the four exhibits --
19 the first four exhibits that are at issue here are just that --
20 excerpts of the testimony at the District Court trial by
21 witnesses whom Jazz -- and Mr. Kaplan was one of co-counsel --
22 had an opportunity to cross examine. This was the evidence
23 that was heard as background by the jury and Judge Hochberg in
24 receipt. So I would divide this issue into two parts. The
25 chart is a variation out of a piece of evidence that was

1 received in the District Court trial, but I think we have to
2 reach that one when we reach it.

3 THE COURT: Okay.

4 MR. ROSENTHAL: But I think the transcripts -- the
5 text of the transcripts, which is what the other exhibits are,
6 are part and parcel of a stipulation. We can go forward
7 without it, but I would commend to the Court --

8 THE COURT: I'm confused about your reference to
9 excerpts at 12:00. That's the -- what the debtor can admit
10 into evidence.

11 MR. ROSENTHAL: Yes. No, I understand, but what I'm
12 saying is that the debtor has already reserved to himself the
13 right to dip into the transcripts of the District Court action
14 and, therefore, has no objection to the use of that transcript,
15 and I think that that does separate this particular issue.

16 THE COURT: Let me just -- maybe it's just that no
17 one knows what is going to be referred to, at least on that
18 side of the fence. Mr. Sirota, do you know what they're going
19 to refer to here?

20 MR. SIROTA: Judge, I'm sure that what they're
21 referring to is buried someplace in 180 exhibits that we
22 received initially, and we all agonized right up until this
23 morning as to identifying precisely what would be admitted.
24 Nowhere in the documents Your Honor just took into evidence is
25 there reference to these other tagalong exhibits. The